



# **Charles County Planning Commission Meeting of August 7, 2023**

## **Department of Planning and Growth Management Staff Report**

**Project Name & Number: Zoning Map Amendment (ZMA) #23-01**

**Type of Project: Local Map Amendment – Base Zone**

**Rural Conservation (RC) to Community Commercial (CC)**

**Applicant: Dash-In Food Stores, Inc.**

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## BACKGROUND

The property that is the subject of this Staff Report is 3620 Mattawoman-Beantown Road, located at the intersection of Mattawoman-Beantown Road and Leonardtown Road (Maryland Route 5), in Waldorf, Maryland. Designated as Parcel 50-R within Grid 12 on Tax Map 15, the 3.02-acre property is “split zoned”. A 1.748-acre portion of the property is zoned Rural Conservation (RC) with the remaining 1.272-acre portion being zoned Community Commercial (CC) and improved by an existing Dash-In convenience store and gas station. The CC zoned acreage is within the Development District and the Priority Funding Area designations, the RC zoned acreage is not. The entirety of the 3.02-acre property is within the Zekiah Swamp watershed. By Plat entitled “Dash-In Food Stores, Inc.” recorded among the Land Records of Charles County, Maryland, in Plat Book 62, Page 187, on May 19, 2022, Parcel 50 (1.272-acre) and P/O Parcel 157 (1.748-acre) were consolidated via PLAT-210035 to create Parcel 50-R in its current 3.02-acre configuration. The 1.748-acre sliver of land for which this application is made originates from its 71.9-acre parent tract, which is 70.125 acres is and will continue to be zoned RC.

In accordance with §297-22 B. of the Zoning Ordinance, *“Whenever a single lot greater than two acres in size is located within two or more different zones, each portion of that lot shall be subject to all the regulations applicable to the zone in which it is located.”*

In accordance with §297-448 B. of the Zoning Ordinance, a Zoning Map Amendment (ZMA) application, dated January 9, 2023, was filed by Mark Mudd, Esq., to change the current zoning of this property from Rural Conservation (RC) to Community Commercial (CC), in order to provide zoning consistency on the entirety of Parcel 50-R, allowing full utilization of the 3.02-acre property as permitted in the CC zone. Convenience stores, motor vehicle fuel sales and car wash operations are permissible land uses within the CC zone, but not within the RC zone. Therefore, unless the 1.748-acre portion is rezoned, the Dash-In operations on-going on Parcel 50-R are constrained to the 1.272-acre portion.

The Applicant’s statement of justification contends that there has been a substantial change in the character of the neighborhood. Since 1996, there have been major improvements to the road network to the property. This Application focuses on the change in the character of that area known as Rosewick Road/St. Charles Parkway, which has been developed since 1996, the date of the last Comprehensive Zoning by Charles County. The last base map zoning for the Dash-In Property occurred in 1996, at which time the Dash-In Property consisted of a 1.272-acre Parcel 50 and was zoned CC, and the 1.748-acre P/O Parcel 157, which was acquired from the neighbor and consolidated, was zoned RC.

Planning Staff’s findings pertaining to these assertions are summarized within the Analysis portion of this report for your consideration.

§297-448 of the Charles County Zoning Ordinance requires the Planning Commission to first consider the application and provide a recommendation to the Board of County

Commissioners as to whether the requested rezoning should be granted. As a result, the purpose of this staff report is to provide guidance to the Planning Commission as it evaluates this rezoning request based upon the argument that there has been a change in the character of the neighborhood which warrants that the property be rezoned to Community Commercial (CC) to reflect compatibility with adjoining land uses that have developed since the property was rezoned in 1996.

### **APPLICABLE LAW / STANDARD OF REVIEW**

The Maryland General Assembly, in its enactment of the Land Use Article of the Annotated Code of Maryland, provided two mechanisms by which a property owner could initiate a request to change the current zoning designation, outside of the more traditional method of rezoning. More specifically, §4-204(b) of the Land Use Article allows an applicant to petition the local legislative body to change the current zoning designation in one of two situations: (1) there has been a substantial change in the character of the neighborhood, which renders the current zoning inappropriate; and (2) when the local legislative body has made a “mistake” (invalid reliance upon or erroneous assumption of facts) when it rezoned the property to its current zoning designation.

§297-448 of the Zoning Ordinance together with the application for a Base Zone Amendment establishes the criteria for evaluating a requested Zoning Map Amendment. In a case in which a property owner argues that a change in the character of the neighborhood has occurred, the owner must demonstrate that the requested rezoning is consistent with the Comprehensive Plan and all other applicable plans including, but not limited to the Comprehensive Water & Sewer Plan and the Capital Improvement Program, etc.

### **SUMMARY OF APPLICANT’S REQUEST**

As stated above, the Applicant is seeking a zoning map amendment, as permitted by § 4-204(b)(2) of the Land Use Article of the Annotated Code of Maryland, which is based upon a finding that there has been a change in the character of the neighborhood.

At this present location, beginning in 1988/1989, the Dash-In convenience store as initially constructed contained approximately 1,056 square feet and the site contained 6 fuel pumps (12 fueling stations). The site plan at the time delineated a future car wash. In 2003/2004, the site was upgraded to a 3,200 square foot convenience store, with 9 fuel pumps (18 fueling positions). Rezoning the 1.748-acre portion of the 3.02-acre property from Rural Conservation (RC) to Community Commercial (CC) for zoning consistency will enable the Applicant to explore an expanded store size and car wash, providing additional jobs and opportunities at this location. The Applicant proffers that there is a need for additional services to the community and that the requested rezoning will allow Dash-In Food Stores, Inc. to provide better services to the citizens of the County. The Applicant understands that as part of any future redevelopment, it will address adequate public facilities at that time of approvals. The requested change will allow Dash-In to remain competitive, explore potential upgrades, and continue to further serve the growing and changing neighborhood.

The neighborhood boundary generated by the Applicant is defined within the Applicant’s Petition for a Local Map Amendment, included in the attachments to this report. In order to

approve a change in zoning, a substantial change in the character of the neighborhood must be shown to have occurred. A neighborhood is defined by more than just streets. The Applicant delineates the “Neighborhood” of the Dash-In Property, encompassing Rosewick Road/St. Charles Parkway. The Dash-In Property is located at the intersection of Maryland Route 5 and St. Charles Parkway/Mattawoman-Beantown Road (the “Intersection”). This intersection is a frequently traveled commuter route for residents of both Charles and St. Mary’s County. For the purposes of this Application, the Applicant limits the focus of the “Neighborhood” change for that area of Rosewick Road/St. Charles Parkway.

The “Neighborhood Map” provided by the Applicant as Exhibits 3 and 3A are sourced from 2002 and 2022 aerial imagery and accurately depict the built environment in this corridor and how it has subsequently changed over time.

The Applicant has additionally supplied the Charles County Subdivision Activity Map as Exhibit 4, dated September 2021, which identifies significant development activity south (Rosewick Road/St. Charles Parkway) of the Dash-In Property. Furthermore, the Applicant identifies that the population of Charles County has made a significant change from the 2010 to 2020 Census, providing statistics from an August 13, 2021, Bay Net article entitled “2020 Census: SOMD Region Sees Second Highest Population Growth in Maryland, which identified Charles County as having the largest increase in population (13.7%) compared to Calvert and St. Mary’s County. The Applicant contends that this statistic further demonstrates that the population characteristics of the Dash-In Property “Neighborhood” have changed significantly since 1996.

Based upon the cumulative changes in the “Neighborhood” as outlined in the submitted application, the Applicant proffers there has been a substantial change in the character of the neighborhood, which renders the current zoning inappropriate and requests that the 1.748-acre portion of the 3.02-acre property be rezoned from Rural Conservation (RC) to Community Commercial (CC) for zoning consistency.

## **ANALYSIS**

### **A. Overview**

After thorough review of the Zoning Map Amendment (ZMA #23-01) application and the Statement of Justification provided by the Applicant, County Staff present the following findings, observations, and conclusions regarding the requested rezoning for the Planning Commission’s consideration.

### **B. Current Zoning**

The last base map zoning for the Dash-In Property occurred in 1996, at which time the Dash-In Property consisted of a 1.272-acre Parcel 50 and was zoned CC, and the 1.748-acre P/O Parcel 157, which was acquired from the neighbor and consolidated, was zoned RC.

The objectives of the Rural Conservation (RC) and Community Commercial (CC) zones are codified within §297-88 and §297-91 of the Zoning Ordinance, as follows:

§297-88. RC Rural Conservation Zone. This zone maintains low-density residential development, preserves the rural environment and natural features and established character of the area. It also maintains existing agricultural and aquacultural activities and the land base necessary to support these activities.

§297-91. CC Community Commercial Zone. CC Community Commercial Zone. This zone provides a wide range of commercial uses and establishments to serve several neighborhoods in appropriate locations along major roads while discouraging strip development.

The Highway Corridor (HC) Overlay Zone includes all lands within 500 feet on each side of the MD Route 5 right of way in Charles County and is subject to the purposes and standards codified within Article X of the Charles County Zoning Ordinance. As outlined in §297-146 A. of the Zoning Ordinance, the purpose of the Highway Corridor Overlay Zone *“is to protect the aesthetic and visual character of land adjacent to major highway corridors and to provide for and promote orderly development. All development proposed within this zone shall be subject to the procedures, standards and guidelines specified in the following sections, in addition to those standards pertaining to the particular base zone in which the development occurs.”* The entire 3.02-acre configuration of Parcel 50-R is encompassed within this overlay zone. It is important to note that a property’s designation within this overlay zone is not justification for, or representation of, commercialized zoning. It is simply recognition of a property’s applicability (regardless of the land use) to the codified standards for properties located within 500 feet of the right of way of US Route 301, MD Route 210, MD Route 228 from MD Route 210 to Bealle Hill Road to US Route 301, MD Route 5 and MD Route 205.

The neighborhood boundary generated by the Applicant is defined within the Applicant’s Petition for a Local Map Amendment, included in the attachments to this report. In order to approve a change in zoning, a substantial change in the character of the neighborhood must be shown to have occurred. A neighborhood is defined by more than just streets. The Applicant delineates the “Neighborhood” of the Dash-In Property, encompassing Rosewick Road/St. Charles Parkway. The Dash-In Property is located at the intersection of Maryland Route 5 and St. Charles Parkway/Mattawoman-Beantown Road (the “Intersection”). This intersection is a frequently traveled commuter route for residents of both Charles and St. Mary’s County. For the purposes of this Application, the Applicant limits the focus of the “Neighborhood” change for that area of Rosewick Road/St. Charles Parkway.

The “Neighborhood Map” provided by the Applicant as Exhibits 3 and 3A are sourced from 2002 and 2022 aerial imagery and accurately depict the built environment in this corridor and how it has subsequently changed over time.

### **C. Requested Rezoning**

The Applicant contends that there has been a change in the “Neighborhood” warranting a change in zoning from Rural Conservation (RC) to Community Commercial (CC). The Applicant contends that as in the past, the facility has been expanded over time to meet the changing needs of its “Neighborhood” and its customers and the business has expanded with growth and change in traffic and population. Rezoning the 1.748-acre portion of Parcel 50-R from RC to CC will allow the property to develop consistent with the long-standing intent and anticipation of the current development within the surrounding area.

The Charles County Zoning Ordinance describes the Community Commercial (CC) zone as a zone that provides a wide range of commercial uses and establishments to serve several neighborhoods in appropriate locations along major roads while discouraging strip development. Developments in the immediate vicinity of Parcel 50-R contain a mixture of commercial, institutional, and residential uses, as well as undeveloped conservation areas. The immediate neighbors of the Dash-In that are commercially developed include a CVS Pharmacy and the Farrall Professional Park at the northwestern corner of Leonardtown Road at St. Charles Parkway and the Gateway Plaza shopping center at the southeastern corner of St. Charles Parkway and Leonardtown Road. These properties are located within the Planned Unit Development (PUD) and Central Business (CB) zones. Neighboring parcels to the immediate west and northeast of Parcel 50-R are currently undeveloped and are zoned Medium-Density Residential (RM) and Rural Conservation (RC). The commercial development of the “Neighborhood” supports and is consistent with the existing residential and commercial development. The Dash-In property supports the needs and services required by the residential and commercial areas of the “Neighborhood” as well as the commuter use of the “Intersection”. Thus, the Applicant contends that a rezoning of the 1.748-acre portion of Parcel 50-R to CC will provide zoning consistency for the entire 3.02-acre configuration and enable Dash-In to explore a rebuild to its premises to meet the changing needs of the public.

Since the 1996 Comprehensive Zoning, the County adopted the Waldorf Sub-Area Plan, the 2016 Comprehensive Plan, and the Waldorf Urban Redevelopment Corridor. Furthermore, since 1996, there have been major improvements to the road network surrounding the Dash-In Property, including the significant construction of Rosewick Road and its connection to St. Charles Parkway. As a result of Rosewick Road/St. Charles Parkway developments, significant residential growth has occurred. The County Plans recommend urban, mixed-use development in this area. The “Neighborhood” population change has been substantial, and the character of the “Neighborhood” demands have changed as to products, services, and conveniences.

After thorough analysis of the Applicant’s Justification Statement, County staff can generally support the Applicant’s conclusion that there has been substantial change in the character of the proffered neighborhood boundary since the last comprehensive rezoning in 1996. Specifically, Rosewick Road has been constructed and linked to St. Charles Parkway. As a result of this creation and linking of roads, significant and intense development has occurred since 1996 along the St. Rosewick Road/St. Charles Parkway, which has noticeably impacted commuter usage

of the “Intersection”, i.e., the intersection of MD Route 5 and St. Charles Parkway/Mattawoman-Beantown Road, where the Dash-In Property is located.

#### **D. Consistency with Applicable County Plans**

The Applicant contends that the proposed rezoning request is consistent with the County’s Comprehensive Plan, Comprehensive Water and Sewer Plan, Capital Improvement Plan, and other County Plans; and concludes that if the rezoning occurs, it will not have any present impact on roads, traffic, water or sewer service to the Dash-In Property. The Applicant understands that as part of any process for redevelopment, that it will address adequate public facilities with the County as part of building permits and approvals of the Dash-In Property; and is cognizant of the fact that adequate public facility review, and compliance will be part of any change to the property as necessitated by the County Code.

Charles County Infrastructure Management staff conclude that the proposed zoning map amendment could feasibly have an impact on public water/sewer. More details about the proposed expansion of the facility are needed to determine if capacity is available. Specifically, Infrastructure Management is concerned about sewer capacity. This Parcel goes directly to the Maryland Route 5 pump station which is over allocated (according to County Utilities). The 1.272-acre, CC zoned, portion of Parcel 50-R, comprising of the existing Dash-In convenience store and gas station, is located within prioritization S-1 on the County’s Comprehensive Water and Sewer Plan, which encompasses areas within the existing central system. The 1.748 acre, RC zoned, portion of the Parcel 50-R, is located within prioritization S-6, which encompasses areas where no service is planned. The establishment of new sewer service to serve new development in S-6 areas is not consistent with the County’s Comprehensive Water and Sewer Plan. Applicant’s wanting to change the service category designation on their property must petition the County for approval consideration.

On the Charles County Septic Tiers Map, adopted on July 12, 2016, as part of the revised and updated 2016 Comprehensive Plan, the 1.272-acre, CC zoned, portion of Parcel 50-R is designated within Tier I. The 1.748-acre, RC zoned, portion of Parcel 50-R is designated as Tier IV. Tier I designated areas are served by public water and sewerage systems. Tier IV designated areas are dominated by agricultural or forest land where public systems are not provided.

Charles County Preservation and Long-Range Planning (PLRP) staff has reviewed the subject application (justification statement and exhibits) for consistency with the goals and objectives of the 2016 Charles County Comprehensive Plan as required under subsection 297-448(G) of the County’s Zoning Ordinance. The Dash-In Property is located in an area that is designated as the “Rural Conservation District” on the County’s Land Use Map (found in the County’s Comprehensive Plan). Additionally, the “original” Dash-In Property prior to the recent replat was entirely within the Comprehensive Plan’s defined “Development District”. Following the recordation of the new plat which expanded the Dash-In Property, the land now proposed for rezoning lies outside the Development District.

Chapter 3 of the County’s Comprehensive Plan states that the Rural Conservation District “is designated as ‘Tier IV’...which only permits minor subdivisions served by individual sewage disposal systems. It is further the intent that areas designated Tier IV are predominantly

conservation areas.” The developed portion of the Dash-In Property is currently within Tier I and served by public sewer, while the property that is the subject of this zoning map amendment is located in Tier IV. It is not the intent of the Plan that commercial uses be located in or expanded into this district. However, the replat or lot line adjustment of the property created the inconsistency.

As specified within §297-448 of the Zoning Ordinance, approval consideration of a zoning map amendment requires consistency with applicable County Plans. However, the Applicant contends that “*consistency does not require strict conformity, as the Comprehensive Plan is a guide for future development in the County.*” Existing Dash-In convenience store and gas station operations on the 1.272-acre portion of Parcel 50-R are consistent with the County’s Plans. In recognition that the Comprehensive Plan serves as a policy guide and framework for future growth, development and preservation in Charles County, the Applicant contends that the consistency of the 1.748-acre portion of Parcel 50-R requested to be rezoned to CC should be duly considered and evaluated by its merits. The Comprehensive Plan’s goals, objectives, policies, and recommended actions provide guidance for decisions concerning how development will be managed or regulated, where and how it should occur, and what capital improvements and public services should be provided to support it. There is no restriction in the Comprehensive Plan that prohibits rezoning of the RC zone to the CC zone, if consistency can be shown. Within their Justification Statement, the Applicant proffers fifteen (15) portions of the Comprehensive Plan, including goals/objectives and policies that support their rezoning request, none of which County staff dispute. County staff concurs with the Applicant that it is impossible to anticipate all possible future occurrences, problems, or opportunities which will arise and, undoubtedly, County residents, the Planning Commission and the County Commissioners will be faced with proposals which could affect many aspects of life in Charles County.

With this understanding, County staff does not disagree with the arguments the Applicant is making regarding consistency with other elements of the Comprehensive Plan. If the property proposed for this ZMA was inside the Development District and within Tier I of the Septic Tier Map, County staff would have little issue with supporting the ZMA and subsequent relatively small-scale redevelopment which may transpire as a result. County staff is obligated to point out, however, that by approving the ZMA, an inconsistency will be created in the County’s Land Use and Septic Tier Maps that will need to be resolved either by an action from the Applicant or by an eventual adjustment to the County’s maps during the Comprehensive Plan update process in 2026. In the meantime, County staff invites the Planning Commission to consider whether the benefits of approving this ZMA and subsequent development outweigh any inconsistencies that are created, what remedies (if any) should be undertaken in the short term to resolve the inconsistency, and whether such an action could set a positive or negative precedent for similar requests in the future.

## **CONCLUSION**



Based upon the foregoing, County Staff concludes that the justification presented by the Applicant is conclusive in demonstrating that a change in the character of the neighborhood has occurred since the last comprehensive rezoning of the Dash-In Property in 1996; and that it is inconclusive in demonstrating that the requested rezoning is consistent with the 2016 Comprehensive Plan, including the Land Use Concept Map, as well as the County's Septic Tier Map, and the County's Comprehensive Water and Sewer Plan. The Planning Commission should consider the following points when formulating their recommendation to the County Commissioners.

There are aspects that support the Applicant's position: (1) a determination of consistency does not require strict conformity, as the 2016 Comprehensive Plan is a policy guide and framework for future development and growth in the County. (2) there is no restriction in the 2016 Comprehensive Plan that prohibits rezoning of the RC zone to the CC zone, if consistency can be shown. Within their Justification Statement, the Applicant proffers fifteen (15) portions of the 2016 Comprehensive Plan, including goals/objectives and policies that support their rezoning request, none of which County staff dispute.

There are aspects that do not support the Applicants position: (1) the 1.748 acre, RC zoned, portion of the Parcel 50-R, is located within prioritization S-6, which encompasses areas where no service is planned. The establishment of new sewer service to serve new development in S-6 areas is not consistent with the County's Comprehensive Water and Sewer Plan. Applicant's wanting to change the service category designation on their property must petition the County for approval consideration; and (2) by approving the ZMA, an inconsistency will be created in the County's Land Use Concept and Septic Tier Maps that will need to be resolved either by an action from the Applicant or by an eventual adjustment to the County's maps during the Comprehensive Plan update process in 2026.

Appendices:

- Zoning Map
- Location Map
- Aerial Map
- Adjacent Property Map
- Application, Justification Statement, and Exhibits